

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS COUNTY COLLEGE,

Petitioner,

-and-

Docket No. SN-84-136

MORRIS COUNTY COLLEGE STAFF
ASSOCIATION, N.J.E.A.,

Respondent.

SYNOPSIS

A Commission designee declines to temporarily restrain arbitration. A scope petition was brought by Morris County College seeking the permanent restraint of arbitration in a matter which was grieved by the respondent Morris County College Staff Association, N.J.E.A. In addition, the petitioner College requested temporary restraints pending final disposition of its scope petition. The arbitration involved the non-renewal of an employment contract of an Assistant Librarian at the College. The contract between the parties contains a just cause provision and language that any such dismissal shall be grievable. The arbitration concerns discipline of an employee who is not the subject of any alternative statutory review procedure. Therefore it would appear that such grievance is arbitrable.

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Appearances:

For the Petitioner

Vogel, Chait, Schwartz & Collins
(Lorraine C. Staples, of Counsel)

For the Respondent

Sterns, Herbert & Weinroth
(Mark D. Schorr, of Counsel)

DECISION ON APPLICATION FOR INTERIM
RESTRAINT OF ARBITRATION

On June 21, 1984, the County College of Morris filed a Scope of Negotiations Petition with the Public Employment Relations Commission seeking to restrain an arbitration of a grievance brought by the Respondent, County College of Morris Staff Association (N.J.E.A.). The subject of the grievance was an Assistant Librarian, Jean Rohmer, an Assistant Librarian at the College and a member of the unit represented by the Respondent Association. Ms. Rohmer was not appointed for the July 1, 1984 to June 30, 1985 employment year. Rohmer's employment term expired June 30, 1984. The position of the College is that "decisions as to whether or not individuals should be appointed for the July 1, 1984 through June 30, 1985 employment term are matters of managerial prerogative and accordingly not negotiable."

The Staff Association and Ms. Rohmer filed a grievance with regard to the College's decision not to appoint Rohmer and seeks to submit the matter to binding arbitration. An arbitration concerning the Rohmer dispute was set for on or about September 25, 1984 and the College made the instant application for interim restraint of said arbitration, pending a full Commission decision. Said application is hereby denied.

The Association points out that the contract provides that at Article 10-B:

"After completing six months of employment, the College may dismiss an employee prior to the expiration of such employee's current employment term for just cause and such dismissal shall be grievable."

The College claims that hiring and firing decisions are managerial prerogatives, and not negotiable. Further under the same provision of Article 10, cited above, the employer has the right to terminate Rohmer.

It is well settled that in a Scope of Negotiations action, the Commission addresses the abstract question of arbitrability only and will not make any factual decisions or address questions of contract arbitrability. Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144, 154 (1978).

There is no gainsaying that discharge is the ultimate discipline that can be imposed upon an employee and, pursuant to the recent amendments, to N.J.S.A. 34:13A-5.4....

"grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and representative

organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means to resolving disputes. The procedure agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or Civil Service laws."

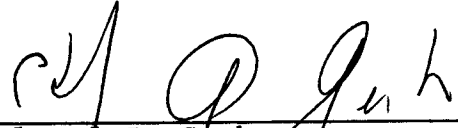
The Commission has followed the Appellate Division determination in C.W.A. v. City of East Orange, 193 N.J. Super, 658, App. Div. (1984), Pet. for Cert. pending, that a disciplinary dispute may be subject to binding arbitration if a disciplined employee has no statutory protection or statutory appeal procedure concerning that specific type of determination. See, also, Bergen Co. Law Enforcement Group v. Bergen Co. Bd./Chosen Freeholders, 191 N.J. Super, 319 App. Div. (1983).

See East Brunswick Board of Education v. East Brunswick Education Association, P.E.R.C. No. 84-149, 10 NJPER 426 (¶ 15192 1984) where grievances challenging a Board's decision to withhold salary increments of two custodians and one secretary were allowed to proceed to arbitration. Also in County of Hudson v. Local 2306, AFSCME, Council 52, AFL-CIO, P.E.R.C. No. 85-33, 10 NJPER ____ (¶ ____ 1984) (Hudson), the Commission would not restrain arbitration of a grievance alleging that the County violated its collective negotiations agreement when it terminated an investigator of the County Welfare Agency who was a provisional Civil Service employee and therefore not under Civil Service protection. See also, Hudson County Area Vocational-Technical School Board of Education v. Hudson County Area Vocational-Technical Education Association, P.E.R.C. No. 85-31, 10 NJPER ____ (¶ ____ 1984) and Communications Workers of America, AFL-CIO v. Mercer County Superintendent of Elections, P.E.R.C.

No. 85-32, 10 NJPER _____ ¶ _____ 1984).

It is apparent that Rohmer's non-renewal ^{1/} is not the subject of any alternative statutory review procedure, and concerns a disciplinary act taken against her, see Cty of Hudson, supra.

Accordingly, the application for interim restraint of the arbitration pending a full Commission decision is denied.



Edmund G. Gerber
Commission Designee

DATED: September 21, 1984
Trenton, New Jersey

1/ This non-renewal is not the result of a lay-off or re-organization.